

No. 11589

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United States

Circuit Court of Appeals

For the Ninth Circuit.

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VINCENT BRUNO,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Northern District of California,  
Southern Division

FILED

JUN 20 1947

PAUL R. GIBSON

CLERK







No. 11589

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## NAMES AND ADDRESSES OF ATTORNEYS

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MR. FRANK J. HENNESSY,

United States Attorney,  
Northern District of California,

MR. JAMES T. DAVIS,

Assistant United States Attorney,  
Northern District of California,  
Post Office Building,  
San Francisco, California,

Attorneys for Plaintiff and Appellee.

In the Southern Division of the United States  
District Court for the Northern District  
of California

INDICTMENT

First Count

(Harrison Narcotic Act, 26 U.S.C. 2553 and 2557)

In the March, 1946, term of said Division of said District Court, the Grand Jurors thereof on their oaths, present:

That Vincent Bruno (whose full and true name is, other than hereinabove stated, to said Grand Jurors unknown, hereinafter called "said defendant"), on or about the 20th day of August, 1945, in the City and County of San Francisco, State of California, within said Division and District, unlawfully did sell, dispense and distribute not in or from the original stamped package, a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle, containing approximately 30 grains of heroin.

Second Count

(Jones-Miller Act, 21 U.S.C. 174)

And the said Grand Jurors, upon their oaths aforesaid, do further present: That at the time and place mentioned in the first count of this indictment, within said Division and District, said defendant fraudulently and knowingly did conceal and facilitate the concealment of said certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly de-

scribed as one bindle, containing approximately 30 grains of heroin, and the said heroin had been imported into the United States of America contrary to law as said defendant then and there knew.

/s/ FRANK J. HENNESSY,  
United States Attorney.

Approved as to form:

R. B. McM.

[Endorsed]: A true bill,  
HAROLD C. CLOUDMAN,  
Foreman.

Presented in open Court and ordered filed March 20, 1946. C. W. Calbreath, Clerk; by Edward E. Mitchell, Deputy Clerk.

District Court of the United States  
Northern District of California  
Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Wednesday, the 27th day of March, in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Louis E. Goodman,  
District Judge.

No. 30078

UNITED STATES OF AMERICA

vs.

VINCENT BRUNO.

ARRAIGNMENT OF DEFENDANT

This case came on regularly this day for arraignment. The defendant Vincent Bruno was present in proper person and with his attorney, Walter Duane, Esq. E. H. Henes, Esq., Assistant United States Attorney, was present on behalf of the United States.

On motion of Mr. Henes, the defendant was called for arraignment. The defendant was informed of the return of the Indictment by the United States Grand Jury, and asked if he was the

person named therein, and upon his answer that he was, and that his true name was as charged, said defendant was informed of the charge against him. Mr. Duane waived the reading of the Indictment.

On motion of Mr. Duane and with consent of Mr. Henes, it is ordered that this case be continued to April 4, 1946, to plead.

---

District Court of the United States  
Northern District of California  
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 13th day of January, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Louis E. Goodman,  
District Judge.

[Title of Cause.]

DEFENDANT'S PLEA OF NOT GUILTY  
ENTERED

This case came on regularly this day for entry of plea of defendant, Vincent Bruno, who was present in proper person and with his attorney, Walter Duane, Esq. James T. Davis, Esq., Assistant United States Attorney, was present on behalf of the United States.

The defendant was called to plead and thereupon

the defendant pleaded "Not Guilty" to the Indictment filed herein against him, which said plea was ordered entered.

After hearing the attorneys, it is ordered that this case be continued to April 1, 1946, for trial. (Jury.)

---

In the Southern Division of the United States  
District Court for the Northern District of  
California, First Division

No. 30078-G

THE UNITED STATES OF AMERICA

vs.

VINCENT BRUNO.

VERDICT

We, the Jury, find Vincent Bruno, the defendant at the bar; guilty as to Count One of the Indictment. Guilty as to Count Two of the Indictment.

FRED S. FIELD,  
Foreman.

[Endorsed]: Filed April 8, 1947.

---

[Title of District Court and Cause.]

MOTION IN ARREST OF JUDGMENT

Now comes Vincent Bruno, the defendant in the above entitled action, against whom a verdict of

guilty was rendered on the 8th day of April, 1947, in the above entitled cause, and moves the Court to arrest the judgment against him and hold for naught the verdict of guilty rendered against him.

1. That the indictment and each Count thereof does not state facts sufficient to constitute a public offense under the laws of the United States;

2. That the evidence is not sufficient to support the verdict;

3. That the verdict of the jury is contrary to law.

Wherefore, because of which said errors in the record herein, no lawful judgment may be rendered by the Court, and the defendant prays that this motion be sustained and the judgment of conviction against him be arrested and held for naught, and that said defendant have all such other orders as may seem meet and just in the premises.

Dated April 8th, 1947.

WALTER H. DUANE,  
Attorney for Defendant.

[Endorsed]: Filed April 8, 1947.

[Title of District Court and Cause.]

MOTION FOR A NEW TRIAL

Now comes the defendant Vincent Bruno, in the above entitled action and moves this Honorable Court for an order vacating the verdict of the jury convicting him and granting him a new trial on the indictment herein, for the following, and each of the following, causes, materially affecting the constitutional rights of said defendant:

1. That the verdict is contrary to the evidence adduced at the trial herein;
2. That the verdict is not supported by the evidence in the cause;
3. That the evidence adduced at the trial is insufficient to justify said verdict;
4. That the verdict is contrary to law;
5. That the trial court erred in admitting evidence in the course of the trial which was incompetent, irrelevant and immaterial, which errors were duly and regularly excepted to by the defendant.

This motion is made upon the minutes of the Court and upon all records and proceedings in said action and upon all of the testimony and evidence introduced at the trial.

Dated April 8th, 1947.

WALTER H. DUANE,  
Attorney for Defendant.

[Endorsed]: Filed April 8, 1947.



District Court of the United States for the  
Northern District of California  
Southern Division

No. 30078 G

UNITED STATES OF AMERICA,

vs.

VINCENT BRUNO.

JUDGMENT AND COMMITMENT.

On the 8th day of April, 1947, came the attorney for the government and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of violation of Title 26 USC., 2553 & 2557; Harrison Narcotic Act, (Ct. 1) defendant did on or about August 20, 1945, in San Francisco, Calif., unlawfully sell, dispense and distribute heroin; Violation of Title 21 USC., 174; Jones-Miller Act, (Ct. 2) defendant did, on or about August 20, 1945, in San Francisco, Calif., knowingly conceal heroin which had been imported in the United States, contrary to law, as charged in Counts 1 & 2 of Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) Years on Count One of the Indictment, and Ten (10) Years on Count Two of the Indictment and pay a fine to the United States of America in the sum of Five Thousand Dollars (\$5,000.00) on Count Two of the Indictment;

It Is Further Ordered that the sentence of imprisonment imposed on said defendant on Count Two of the Indictment commence and run at the expiration of the sentence of imprisonment imposed on said defendant on Count One of the Indictment,

It Is Further the recommendation of this Court that said defendant be given any hospitalization that he may require in a Federal Narcotic Hospital during his term of imprisonment,

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

LOUIS E. GOODMAN,  
United States District Judge.

L. R. ELKINGTON,  
Deputy Clerk.

Examined by:

JAMES T. DAVIS,  
Asst. U. S. Attorney.

The Court recommends commitment to: Federal Penitentiary.

Entered in Vol. 38 Judg. and Decrees at Page 65.

Filed and entered this 8th day of April, 1947,

C. W. CALBREATH,  
Clerk.

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District Court of the United States  
Northern District of California  
Southern Division

At A Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 8th day of April, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Louis E. Goodman,  
District Judge.

No. 30078

UNITED STATES OF AMERICA,

vs.

VINCENT BRUNO.

MOTION FOR A NEW TRIAL AND MOTION  
IN ARREST OF JUDGMENT DENIED—  
MINUTES OF TRIAL AND SENTENCE

This case came on regularly this day for the trial of the defendant, Vincent Bruno, who was present

with his attorney, Walter Duane, Esq. James T. Davis, Esq., Assistant United States Attorney, was present on behalf of the United States. Thereupon the following named persons, viz:

|                     |                        |
|---------------------|------------------------|
| Samuel L. Barnes    | Neva M. Moore          |
| John F. Sliwinski   | Mrs. Elena Schreiner   |
| Fred S. Field       | Mrs. Gladys G. Nielsen |
| Robert Lee          | Errol Lane             |
| Frederique F. Breen | Mrs. Annella M. Lemmon |
| Miss Jessie I. Case | Mrs. Grace E. Marr     |

twelve good and lawful jurors, were, after being duly examined under oath, accepted and sworn to try the issues joined herein. Mr. Davis made an opening statement to the Court and jury on behalf of the United States. R. F. Love, William H. Grady and Jacob Lieberman were sworn and testified on behalf of the United States. Mr. Davis introduced in evidence and filed U. S. Exhibits Nos. 1 and 2. The United States then rested. Vincent P. Bruno was sworn and testified in his own behalf, and thereupon the defendant rested. After argument by the attorneys and the instructions of the Court to the jury, the jury retired at 3:55 p.m. to deliberate upon its verdict. At 4:54 p.m. the jury returned into Court and upon being asked if they had agreed upon a verdict, replied in the affirmative and returned the following verdict which was ordered filed and recorded, viz:

“We, the jury, find Vincent Bruno, the defendant at the bar, Guilty as to Count One of

the Indictment, Guilty as to Count Two of the Indictment.

FRED S. FIELD,  
Foreman''.

Upon being asked if said verdict as recorded was the verdict of the jury, each juror replied that it was. Ordered that the jurors be excused from further consideration of this case and from attendance upon the Court until notified.

Mr. Duane made a motion for a new trial and motion in arrest of judgment, which motions were ordered denied.

William F. Grady was recalled and testified on behalf of the United States.

The defendant was called for judgment. After hearing the defendant and the attorneys, and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant Vincent Bruno, for the offense of which he stands convicted on his plea of Not Guilty and a verdict of the jury of guilty of the offense charged in the First and Second Counts of the Indictment, be and he is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) Years on Count One of the Indictment; and Ten (10) Years on Count Two of the

Indictment; and pay a fine to the United States of America in the sum of Five Thousand (\$5,000.00) Dollars on Count Two of Indictment.

It Is Further Ordered that the sentence of imprisonment imposed on said defendant on Count Two of the Indictment commence and run at the expiration of the sentence of imprisonment imposed on said defendant on Count One of the Indictment.

It Is Further the recommendation of this Court that said defendant be given any hospitalization that he may require in a Federal Narcotic Hospital during his term of imprisonment.

Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

The Court recommends commitment to a Federal Penitentiary.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL.

Name and Address of Appellant: Vincent Bruno, 437 Washington Street, Monterey, California.

Name and Address of Appellant's Attorney: Walter H. Duane, 790 Mills Building, 220 Montgomery Street, San Francisco, 4, California.

Offense: Violation of Harrison Narcotic Act, 26

U.S.C. 2553 and 2557 in the First Count of the Indictment; violation of Jones-Miller Act, 21 U.S.C. 174 in the Second Count of the Indictment.

After trial by jury a verdict was returned finding the defendant guilty on both counts of said indictment on the 9th day of April, 1947.

That thereupon, on the said 9th day of April, 1947, defendant made a motion for a new trial, which motion was denied, and thereupon made a motion in arrest of judgment which motion was denied, and the Court thereupon made its judgment and sentenced the defendant as follows:

Five years on the First Count,  
Ten years on the Second Count,  
Fined \$5,000.00 on the Second Count.

The sentences in the First Count and Second Count to be served consecutively; the total sentence being fifteen years imprisonment and a fine of \$5,000.00.

Name of Prison where now confined: County Jail of the City and County of San Francisco.

That defendant appeals from the judgment of conviction and from the order denying his motion for a new trial.

Dated: April 10th, 1947.

WALTER H. DUANE,  
Attorney for Defendant.

[Endorsed]: Filed Apr. 11, 1947.

District Court of the United States  
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT  
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 16 pages, numbered from 1 to 16, inclusive, contain a full, true, and correct transcript of the records and proceedings in the matter of United States of America, Plaintiff, vs. Vincent Bruno, Defendant, No. 30078 G, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$6.40 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 22nd day of May, A.D. 1947.

[Seal]

C. W. CALBREATH,  
Clerk.

/s/ M. E. VAN BUREN,  
Deputy Clerk.



[Endorsed]: No. 11589. United States Circuit Court of Appeals for the Ninth Circuit. Vincent Bruno, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed May 22, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

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In the United States Circuit Court of Appeals,  
for the Ninth Circuit

No. 11589

VINCENT BRUNO,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS UPON WHICH  
APPELLANT RELIES ON APPEAL

Now comes Vincent Bruno, the appellant in the above entitled cause, and submits herein his statement of points upon which he intends to rely on appeal, as follows:

1. That the evidence was and is insufficient to support the verdict of guilty.

2. That the evidence was and is insufficient to support the verdict of guilty to the Second Count of said Indictment.

3. That the Court erred in overruling appellant's objections to questions propounded by the United States Attorney to the Government witnesses.

4. That appellant was twice put in jeopardy for the same offense.

5. That appellant was punished twice, though the same evidence was used to support conviction under both counts.

Appellant desires that the record, as certified to the Clerk of this Court, be printed in its entirety.

Dated: May 27th, 1947.

/s/ WALTER H. DUANE,  
Attorney for Appellant.

Receipt of a copy of the foregoing Statement of Points Upon Which Appellant Relies on Appeal is hereby admitted this 28th day of May, 1947.

/s/ FRANK J. HENNESSY,  
United States Attorney.

By .....  
Assistant U.S. Attorney.

No. 11589

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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VINCENT BRUNO,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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SUPPLEMENTAL  
Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Northern District of California,  
Southern Division



No. 11589

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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VINCENT BRUNO,  
Appellant,  
vs.  
UNITED STATES OF AMERICA,  
Appellee.

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SUPPLEMENTAL  
Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Northern District of California,  
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In the District Court of the United States for the  
Northern District of California, Southern  
Division

Before: Hon. Louis E. Goodman,  
Judge.

No. 30,078

UNITED STATES OF AMERICA,

Plaintiff,

vs.

VINCENT BRUNO,

Defendant.

REPORTER'S TRANSCRIPT

Tuesday, April 8, 1947

Counsel Appearing:

For the Government: James B. Davis, Esq.,  
Assistant United States Attorney.

For the Defendant: Walter Duane, Esq.

(A jury was duly impaneled and sworn to try  
the cause, after which the following proceedings  
took place:) [1\*]

Mr. Duane: If the Court please, may I at this  
time move that all witnesses be excluded from the  
courtroom?

The Court: Do you wish to have Mr. Grady  
remain? Is he to be a witness?

Mr. Davis: I have only two witnesses. My other  
witness may be excused.

---

\* Page numbering appearing at top of page of original certified  
Transcript.

The Court: All witnesses for both the Government and the defense in this case except Mr. Grady——

Mr. Davis: And you will stipulate that Dr. Love may remain?

Mr. Duane: Yes.

The Court: That will only apply to your own witnesses.

Mr. Duane: What is that?

The Court: I say any order that the Court may make——

Mr. Davis: I have another witness, your Honor, Mr. Liberman, who may be excused.

The Court: All witnesses in this case Mr. Grady and Dr. Love may be excused and will remain outside the courtroom until called.

Mr. Davis: Your Honor and ladies and gentlemen of the jury, as his Honor has told you, by reading the indictment, this is a narcotic case. It arises out of one transaction, that is, the sale of a certain quantity of narcotics, which was a violation of the Harrison Narcotic Act. As his Honor read to you, the indictment charges that the defendant did sell, dispense, and distribute not in or from an original stamped package a certain [2] quantity of narcotics. In passing I might say under Federal regulations all legitimate narcotics, narcotics manufactured for medicinal purposes, are marked with a revenue stamp similar to a package of cigarettes, and his Honor will no doubt instruct you, because it is the law, that the absence of those stamps is an indication that the narcotics are, of course, illicit drugs.

Then, in connection with that sale, it is quite obvious in most cases that the defendant would also possess the narcotics which he sold, and that gives rise to a second count, a violation of the Jones-Miller Act, which charges in substance that the defendant concealed and facilitated the concealment of the same narcotics which he was charged with in the first count having sold.

In this connection, ladies and gentlemen, the Government will prove that on August 20, 1945, at about 10:15 in the evening Agent Grady and a man by the name of Lieberman, a special employee of the Narcotic Division, drove in a government-owned automobile to the corner of Bush and Larkin Streets, and at that point Agent Grady searched Mr. Lieberman, the special employee, and found that he had no narcotics or money on his person. He gave him \$100 from the official advance funds of the Federal Bureau of Narcotics. He then followed Mr. Lieberman, kept him under his observation, and saw him enter the Stardust Bar, which, I believe, as the evidence will show, is on Sutter [3] Street. He observed him enter there about 10:35 in the evening, that is, Mr. Lieberman entered the bar.

The defendant, Vincent Bruno, said, "Hello, Jack."

And Bruno, the defendant, and Lieberman walked into the washroom of the bar in the back where the defendant handed Lieberman a bindle of Heroin, the same bindle that is described in the indictment; that they had a conversation there, and Lieberman

said he thought he was to get two bindles. Bruno said, "No, I thought you only wanted one."

Lieberman gave Bruno \$50 from the \$100 which had already been given him by Agent Grady, and then he and Bruno came out of the washroom, and at 10:40 they came out of the bar and stood on the street. They talked there for a few moments. The defendant Bruno re-entered the bar. Lieberman walked down towards Larkin Street, where he was followed by Agent Grady, and he gave Agent Grady the bindle of heroin which he had purchased from the defendant Bruno, and gave him back \$50 of the \$100 which Agent Grady had given him. Having proven those facts, ladies and gentlemen, we will ask you to return a verdict of guilty as charged.

The Court: Did you want to put on a witness out of order in this matter or were you going to proceed in the regular order?

Mr. Davis: I thought we would put on Dr. Love, the chemist, if that is agreeable to Mr. Duane.

Mr. Duane: Oh, yes. [4]

---

DR. R. F. LOVE

was called as a witness on behalf of the Government; sworn.

The Clerk: Will you state your name to the Court and Jury?

A. R. F. Love.

(Testimony of Dr. R. F. Love.)

Direct Examination

By Mr. Davis:

Q. Dr. Love, what is your occupation?

A. Chemist, United States Internal Revenue Bureau.

Q. How long have you been engaged in that occupation? A. Twenty-eight years.

Q. As part of your official duties, is it necessary upon occasion for you to examine certain articles furnished to you for the purpose of determining whether or not they contain narcotics?

A. Yes, sir.

Q. And you perform certain specified tests on the material submitted to you, is that correct?

A. Yes, sir.

Mr. Davis: I ask that this white paper package be marked Government's No. 1 for Identification. I will ask that this envelope in which it is enclosed be marked Government's 2 for Identification.

(Thereupon white paper package was marked Government's Exhibit No. 1 for Identification and envelope in which package is enclosed was marked Government's Exhibit No. 2 for Identification.) [5]

Q. (By Mr. Davis): Dr. Love, I show you this white paper package marked Government's 1 for Identification and ask you if you ever saw that before? A. I did.

Q. When did you first see it?

A. On August 22, 1945.

(Testimony of Dr. R. F. Love.)

Q. From whom did you receive it, if you recall?

A. I received it from Narcotic Agent Grady.

Q. In accordance with your usual practice did you perform the tests that you testified to on the contents of that package?      A. I did.

Q. What did you find it to contain?

A. It contained Heroin hydrochloride.

Q. Did you perform any quantitative tests?

A. No, sir.

Q. Directing your attention to some markings that are on that package, did you or did you not place your initials on the package at that time that you received it from Agent Grady and performed the tests?

A. Yes, sir, my initials and the serial number.

Q. It is a fact, is it not, that this package has been continuously in the possession of your office since the time you received it from Agent Grady until you produced it at the trial here today?

A. That is true, yes. [6]

Q. I show you this official envelope of the Treasury Department marked "District 14 Cal. 3434," and ask you if that is the envelope in which that bindle of narcotics was contained at the time you received it?      A. It is.

Q. And it has been in that envelope until you opened it in court here today?      A. Yes, sir.

Mr. Davis: That is all.

Mr. Duane: No questions.

The Court: That is all.

Mr. Davis: Dr. Love may be excused, I presume?

Mr. Duane: Yes.

The Court: Yes, Dr. Love may be excused. At this time, ladies and gentlemen, we will take a brief recess. We usually take a recess in midmorning and midafternoon for five or ten minutes. We will take the recess at this time. At all times while you are absent from the courtroom in recess or while you are going to your homes and businesses and while you are not present in the courtroom, it is your duty not to talk about this case among yourselves or allow anybody to talk to you about the case. Also it is your duty not to form or express any opinion concerning the case until the matter is finally submitted to you for your decision. We will take a recess at this time. [7]

(Recess.)

The Court: The Jurors are all present. You may proceed.

Mr. Davis: Call Mr. Grady.

---

WILLIAM H. GRADY

was called as a witness on behalf of the Government; sworn.

The Clerk: State your name to the Court and Jury.

A. William H. Grady.

Direct Examination

By Mr. Davis:

Q. Mr. Grady, what is your occupation?

(Testimony of William H. Grady.)

A. I am an agent of the Federal Bureau of Narcotics.

Q. How long have you been engaged in that occupation?

A. Approximately four and a half years.

Q. Do you know the defendant in this case, Mr. Vincent Bruno?      A. Yes, sir.

Q. How long have you known Mr. Bruno?

A. I have known Mr. Bruno since—by sight to see him since 1944.

Q. Directing your particular attention to the 20th day of August, 1945, did you have occasion to see the defendant on that day?      A. Yes, sir.

Q. Where did you first see him on that day?

A. At the Stardust Bar.

Q. Where is that located? [8]

A. That is located on the corner of Larkin and Sutter Streets, in San Francisco.

Q. At what time of the day or night did you first see him?      A. Approximately 10:30 p.m.

Q. Was there anyone else with you at the time you saw the defendant?

A. I saw the defendant with Mr. Lieberman.

Q. Who is Mr. Lieberman?

A. He is a special employee of the Government.

Q. Does he work for the Federal Bureau of Narcotics with you?      A. Yes, sir.

Q. Prior to your seeing Mr. Lieberman and Mr. Bruno together on the evening of August 20, 1945, what events transpired between you and Mr. Lieberman prior to that time?



(Testimony of William H. Grady.)

Mr. Duane: Objected to as incompetent, irrelevant, immaterial, and hearsay.

The Court: You are not asking for a conversation?

Mr. Davis: I am not asking for a conversation. I am just asking what transpired, if anything.

Mr. Duane: I urge the objection.

The Court: I will overrule it.

The Witness: As the result of a previous conversation with an informer I went with Mr. Lieberman in a Government automobile to the corner of Bush and Larkin Streets. At that point I searched Mr. Lieberman, went through his pockets and found that [9] he had no money or no narcotics. At that time I gave him \$100, two \$50 bills Government money. Government advanced funds. Then I walked——

Q. (By Mr. Davis): Before you go there, tell us how thorough was this search. You say you satisfied yourself that he did not have any narcotics or any money in his possession before you gave him the marked money, is that correct?

A. Yes. This search was a search of his clothing. He did not remove any of his clothing, his shoes or anything like that. The search was made over his person, his pockets, the ordinary places a person would be searched.

Q. What was the next thing, if anything, that you did?

A. I then followed Mr. Lieberman down to the Stardust Bar, which is a block from where the car

(Testimony of William H. Grady.)

was parked, walking down Larkin Street to the south, to the corner of Sutter and Larkin, and at that point I saw Lieberman enter the Stardust Bar.

Q. While you were walking down Larkin Street did you or did you not have Mr. Lieberman under your observation at all times? A. Yes, sir.

Q. Did you see him meet anyone else?

A. No, sir.

Q. About how far away were you from him as he was walking down the street?

A. Some places as close as five feet; other times perhaps as far away as twenty feet. [10]

Q. And it was approximately one block from where the car was parked down to the entrance of the Stardust Bar, is that correct? A. Yes.

Q. You say you saw Mr. Lieberman enter the Stardust Bar? A. Yes.

Q. How far away from him were you at the time he entered?

A. As he entered the bar I was standing on the curb at the outside edge of the sidewalk in front of the bar. The door was open to the bar. As he walked into the bar, I stood there and watched him meet the defendant, Bruno.

Q. Describe the situation there as far as the physical setup of the bar and the location of Mr. Bruno and Lieberman at the time they met.

A. The Stardust Bar—there is two entrances. The entrance that was used by Lieberman was the farthest one to the west, and there is a bar that runs along the side east of the door, just east of the door,

(Testimony of William H. Grady.)

and as you look through the door you can see to the rear of the bar a distance of approximately thirty-five feet. The stools are along in front of the bar, which, as I would look in, were on my right.

To the left as you look in, there is, as I recall, some booths there. I am not certain, but I believe there was. I wasn't too interested in that.

As Mr. Lieberman walked into the bar I saw the defendant, Bruno, standing about—he was about midway of the bar from [11] the front to the back and about the middle—about the middle of the bar. There were either five or six other people at the bar at the time, and I believe that Bruno was talking to some of the other people as Lieberman entered. As Lieberman approached, Bruno turned and said something, which I did not hear, to Mr. Lieberman, and together they walked to the back of the bar and through a door out of my view.

I then walked up the street, walking east on Sutter Street, to a point approximately seventy-five or a hundred feet from the corner, from the corner of Larkin and Sutter on the same side of the street as the Stardust Bar.

About five minutes later, three to five minutes later, I observed the defendant Bruno and Mr. Lieberman walk out of the front of the bar. Bruno looked up and down the street for a moment and talked or stood with Lieberman for approximately a moment. And then Bruno turned and walked back into the bar. Lieberman walked west on Sutter Street to Polk.

(Testimony of William H. Grady.)

I observed him all this time walk west on Sutter to Polk and turn on Polk to the right—that would be to the north. Approximately one hundred feet past the intersection of Sutter and Polk is an alleyway known as Fern Street. He stepped into this Fern Street and at that time handed me a bindle of Heroin and \$50, one of the \$50 bills that I had previously given him.

Q. At that time you observed him walk up the street, from the time he left Bruno out in front of the bar, until you met him [12] and he gave you the narcotics on Fern Street, did you see him meet anyone else?      A. No, sir.

Q. Going back to the time you followed Mr. Lieberman into the bar, if I understand your testimony correctly, Bruno was about in the center of the bar?      A. Yes.

Q. Lieberman walked up to him, they had a conversation, they turned and walked down to the end of the bar and out through a door?

A. Yes, sir.

Q. Where were you in relation to the bar and the premises at this time?

A. I was in front of the premises approximately on the curb, within a foot or two of the curb, standing on the sidewalk looking through the front door.

Q. And the door was open, you say?

A. The door was open.

Q. What was the condition of the barroom as far as lights are concerned?

(Testimony of William H. Grady.)

A. Rather subdued lighting, not a real brightly—not real brightly lit, but I would say a subdued lighting in the bar.

Q. After you saw Bruno and Lieberman go through this rear door what did you do next?

A. I then walked east on Sutter Street approximately one hundred [13] feet from the corner, seventy-five to one hundred feet from the corner, of the intersection of Sutter and Larkin.

Q. Then, if I understand your testimony correctly, you next saw Lieberman and Bruno come out in front of the bar and stand on the sidewalk?

A. Yes, sir.

Q. Bruno went back in and Lieberman then went on down the street? A. Yes, sir.

Q. About how much would you say elapsed from the time you saw Bruno and Lieberman go through the back door until they reappeared at the front of the premises?

A. From three to five minutes.

Q. I will show you Government's Exhibit No. 1 for Identification and ask you if this is the package which Mr. Lieberman—this is leaking, your Honor. I am going to be an addict myself.

Mr. Duane: We will object to it upon the ground it is incompetent, irrelevant, and immaterial, and not binding on the defendant.

Mr. Davis: You object to what, Mr. Duane?

Mr. Duane: The question you just propounded to the witness.

The Court: Overruled.

(Testimony of William H. Grady.)

Q. (By Mr. Davis): Is that the package which you received from Mr. Lieberman?

A. Yes, sir. [14]

Q. On the occasion that you just testified to?

A. Yes, sir.

Q. That is the package he gave to you at the intersection of Fern and Larkin, is it?

A. On Fern and Polk.

Q. What did you do with this after you received it.

A. I delivered that to the Internal Revenue Bureau of Chemists, Dr. R. F. Love.

Q. Is this the envelope in which it was contained (handing document to the witness)?

A. Yes, sir.

Q. And you say at that time that Mr. Lieberman, in addition to giving you that package, returned to you one of the \$50 bills which you had previously given to him, is that correct? A. Yes, sir.

Mr. Davis: Will the Court bear with me a moment while I check this report?

That is all.

### Cross-Examination

By Mr. Duane:

Q. Mr. Grady, this incident that you testified to you say occurred on the 20th of August, 1945, is that right? A. Yes, sir, that is correct.

Q. By the way, you referred here to Lieberman as a special employee. A. Yes, sir. [15]

(Testimony of William H. Grady.)

Q. As a matter of fact, he is what is termed an informer, is he not?

A. Well, you could call a man anything if you wished to call him names, I imagine, counsel.

Q. Not names, but what is the designation that your department gives him, and I will ask you does it not give the designation for this man as informer?

A. I have seen him referred to as both an informer and a special employee.

Q. You know he is an ex-convict?

A. Why, of course, yes.

Q. And you know that he is not a civil service employee?      A. No, sir.

Mr. Davis: If the Court please, I am going to object to all of this. We are going to produce Mr. Lieberman. These questions are all proper cross-examination of him if they are proper at all. They are not of Mr. Grady's knowledge.

Mr. Duane: I think it is proper cross-examination, if the Court please, when it refers to the man as a special employee.

The Court: I will allow it.

Q. (By Mr. Duane): You and Lieberman drove to Larkin and Bush Street, is that correct?

A. Yes, sir.

Q. Was there anyone else with you?

A. Yes, sir, Agent Joseph Bartis. [16]

Q. Lieberman left you and walked ahead of you south of Market Street, is that correct?

A. South of Market, that is right.

Q. Turned the corner at Sutter, turned to his left, turned east?

(Testimony of William H. Grady.)

A. Yes, turned east on Sutter.

Q. You were a short distance behind him, sometimes twenty feet and sometimes five feet?

A. I didn't say I was behind him, counsel.

Q. Oh, you were not behind him?

A. I didn't say I was behind him.

Q. Where were you then?

A. I was oftentimes even with him on the sidewalk. Sometimes I walked opposite him. Sometimes I walked behind him. I did not make any special pattern as we walked down.

Q. At any rate, he walked east on Sutter Street to the entrance of this tavern, didn't he?

A. He walked on Sutter east, that is right, to the entrance to the bar.

Q. To the entrance to the tavern?

A. Yes, sir.

Q. You also walked east on Sutter?

A. Yes, sir.

Q. To the entrance to the tavern or out toward it, out on the sidewalk, is that right?

A. That is right. [17]

Q. Where you could look in?

A. That is right.

Q. And you saw Lieberman go in. By the way, he is also known as Mendel, isn't he, Jack Mendel?

A. Yes.

Q. So you saw him enter the premises; at that time you saw Bruno also?           A. Yes, sir.

Q. Can you tell us how Bruno dressed? Was he tending bar?



(Testimony of William H. Grady.)

A. No, sir, he was on the outside, on the customers' side of the bar.

Q. On the customers' side of the bar?

A. Yes.

Q. And——

A. Pardon me. You asked me how he was dressed.

Q. Yes. I meant to say he did not have a bartender's uniform on?      A. No, sir.

Q. Then you saw the defendant and Lieberman meet?      A. Yes, sir.

Q. Saw them come together. Did you see them walk down towards the back of the bar and through a doorway, is that right?      A. Yes, sir.

Q. Did you see them go through that doorway?

A. Yes, sir. [18]

Q. Did the door close after them?

A. I don't know. They passed from my view.

Q. What?

A. They passed from my view. The only place they could have gone was through the door.

Q. When you saw that happen, as I understand your testimony, you walked east on Sutter Street?

A. Yes, sir.

Q. Up the hill?      A. Up the hill.

Q. You went up to about one hundred feet, I think you said, west of the street above that?

A. No, one hundred feet east of the corner that the bar is on.

Q. You walked about one hundred feet from

(Testimony of William H. Grady.)

Sutter Street. That would be on Sutter between Market and Hyde?

A. That would be on Sutter between Market and Hyde.

Q. About one hundred feet up?

A. About one hundred feet up the hill from the intersection of Sutter and Larkin.

Q. Then you saw Lieberman and the defendant both come out from the premises there, from the bar?

A. I did.

Q. And they stood on the sidewalk?

A. Yes, sir.

Q. For how long? [19]

A. I would say, to the best of my recollection, it could have been a minute and a half, but I would say a minute. It wasn't very long.

Q. What were you doing at that time?

A. I was standing on the street.

Q. Just watching? A. Yes, sir.

Q. As I recall your testimony, Bruno reentered the bar?

A. Yes, sir.

Q. And Lieberman walked west on Sutter Street?

A. Yes, sir.

Q. And he walked to Polk?

A. Walked to Polk, yes, sir.

Q. He turned to the right on Polk Street, walking north on Polk?

A. That is right.

Q. Then he came to this little street called Fern Avenue or Fern Street?

A. Yes, sir.

Q. And he turned to the right and went into that little street, is that right?

(Testimony of William H. Grady.)

A. That is right, yes, sir.

Q. Did you walk with him along Sutter Street?

A. No, sir.

Q. You contacted him in Fern Street? [20]

A. Well, walked close enough to him to where I could have touched him after we turned on Polk Street.

Q. Did you run to catch up to him?

A. No, I walked fast. I walked fast and he didn't walk too fast.

Q. However, he got into Fern Street and you followed him in there?

A. I went in with him, you might say.

Q. You went in with him; you went together?

A. That is correct.

Q. Why did you go into Fern Street if you were together?

A. I wanted to look him over. I wanted to see how much money he had. He was going to give me the money he had if he had any money.

Q. You knew he had some money?

A. No, I gave him \$100, and I was either going to get the narcotics or the money at that time.

Q. You say you wanted to see what money he had and you wanted to get the money?           A. Yes.

Q. Wasn't it your thought that the money had been disposed of?

A. Yes, it had been up to the time he turned the corner on Polk Street.

Q. What is that?

A. Up to the time he came down on Polk Street

(Testimony of William H. Grady.)

and, I think, as [21] I recall, to the best of my recollection, he had told me that he had \$50; that he had only purchased one paper as he was walking on Polk Street.

Q. So you went into little Fern Street to get the \$50?

A. I wanted to talk to Mr. Lieberman.

Q. You had an automobile waiting up at Larkin and Bush, didn't you?

A. That is right, where I told the man I would meet him. This was a pre-arranged meeting place.

Q. This was all pre-arranged?

A. Oh, yes, yes.

Q. So you did not make the meeting place in the automobile but, rather, made it on Fern Avenue near Polk, is that right?      A. Yes, sir.

Q. By the way, about what time was that?

A. Oh, I would say that was 10:40.

Q. About 10:40 p.m.?      A. Approximately.

Q. What was the lighting condition in Fern Avenue that night?

A. To the best of my recollection it was just an ordinary—it isn't a real dark street or not a real bright street. It is just one of these——

Q. Don't you know, Mr. Grady, there is no light in Fern Street or Fern Avenue between Polk and Larkin?

A. Is there any light on Polk Street, Mr. Duane?

Q. I am talking now about Fern Avenue.

A. You probably have the impression, Mr.

(Testimony of William H. Grady.)

Duane, that I met Mr. Lieberman in the middle of Fern Avenue.

Q. What is that?

A. Did I leave you with the impression that I met Mr. Lieberman in the middle of Fern Avenue, down half way between Polk and Larkin?

Q. No, I do not have any impression. I just want your testimony.

A. The testimony that I am giving you, counsel, is that it was approximately fifteen to twenty feet from Polk Street, the place the transaction was made, where Lieberman handed me the narcotics and the money.

Q. Is that all that transpired, he handed you the narcotics and the money?

A. Yes, and I looked through his pockets again.

Q. By the way, you say you searched him before he went into this tavern?

A. Yes, sir.

Q. Where did that search take place?

A. In the automobile.

Q. In the automobile?

A. Yes.

Q. What kind of a search did you make? How did you search him?

A. I reached through his pockets, felt into his pockets, much the same as you would feel into a pocket—you would go through [23] his clothing. That was the extent of my search.

Q. What pockets did you go through?

A. All the pockets that I could find.

Q. What?

A. All the pockets that I could find.

(Testimony of William H. Grady.)

Q. Was he wearing a vest? A. No, sir.

Q. He was not? A. No, sir.

Q. Can you tell the Jury what pockets you searched? A. Yes, sir.

Q. Will you tell them?

A. Yes, sir. He had on a sports jacket with two pockets on the side; no other pockets in the sports jacket as I recall. He had on a sport shirt with two pockets in the shirt. He had on trousers with two side pockets, two rear pockets, and a watch pocket. That is the pockets that I searched.

Q. Those were the pockets that you searched?

A. Yes, sir, to the best of my recollection.

Q. By the way, Mr. Grady, did I understand you to say that you gave Lieberman two \$50 bills?

A. Yes, sir.

Q. And they were marked, were they?

A. Well, you might call them marked, Mr. Duane. We call them identified. When we take official advance funds out of the [24] Government funds, traveling around with different criminal elements, we identify the money so that if we are robbed we would be able to recover our money if it was possible.

Q. Is that identification the number of the bill?

A. The serial number.

Q. The serial number? A. Yes, sir.

Mr. Duane: That is all.

Mr. Davis: That is all.

The Court: Is this bar at the corner?

A. At the corner, yes, sir.

(Testimony of William H. Grady.)

The Court: I do not think that that was clear.

Q. The bar itself was on the corner of Larkin and Sutter?

A. Larkin and Sutter, the entrance being about ten feet from the Larkin—on Sutter Street about ten feet from the corner of Larkin, from the intersection.

Redirect Examination

By Mr. Davis:

Q. Mr. Grady, you say it was pre-arranged with Lieberman as to where you were going to meet him after he came out of the bar, is that correct?

A. Yes, sir.

Q. That was up this alley?

A. Up Fern Street, yes, sir.

Q. You say you were fifteen or twenty feet around the corner from Polk Street? [25]

A. Approximately that. That is my estimation of it.

Q. It was there that he handed you the narcotics and gave you back the money? A. Yes, sir.

Q. To the best of your recollection you believe he told you he bought only one paper instead of two?

A. Yes.

Q. When he was walking up the street with you on Polk. is that correct?

A. Yes, that is my recollection of the transaction.

Q. Then what did you do, go back to your car?

Mr. Duane: Just a minute, if the Court please,

(Testimony of William H. Grady.)

we will object to that as not proper redirect examination.

Mr. Davis: I think it is proper, your Honor, because the defense counsel has gone into the point about why they did not go up to the car and why they went into Fern Street.

Mr. Duane: I will withdraw the objection.

Q. (By Mr. Davis): What did you do after that?

A. We went back to the automobile. I walked down through Fern Street to Larkin, up Larkin to Bush, and entered the Government automobile and left. The reason we didn't—

Mr. Duane: Just a minute.

The Court: You have answered the question.

Mr. Davis: That is all.

Mr. Duane: That is all. [26]

Mr. Davis: Call Mr. Lieberman.

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### JACOB LIEBERMAN

was called as a witness on behalf of the Government; sworn.

The Clerk: State your name to the Court and Jury.

A. Jacob Lieberman.

#### Direct Examination

By Mr. Davis:

Q. Mr. Lieberman, where do you reside?

A. 361 South Third Street, Brooklyn, New York.



(Testimony of Jacob Lieberman.)

Q. What is your occupation?

A. Wardrobe maker.

Q. What type of occupation is that? I do not understand it.

A. Luggage.

Q. Luggage? A. Yes, sir.

Q. Were you also employed by the Federal Bureau of Narcotics?

A. Yes, sir.

Q. What is your occupation for them?

A. Special employee.

Q. You have a civil service standing?

A. No, sir.

Q. How are you employed? Full or part time?

A. By the day.

Q. Would I be correct in assuming, then, that you work on various cases for the Government as you are assigned to them, [27] is that correct?

A. Yes, sir.

Q. In the light of your testimony that you are employed by the Federal Bureau of Narcotics as a special employee in various cases, are you known by any other name than Jacob Lieberman?

A. Yes, sir.

Q. What other names, if you can recall them?

A. Well, Jack Louis, Jack Cohen, Jack Hayward—and various other different names, but I always used my first name.

Q. You always used Jack? A. Jack.

Q. In San Francisco in connection with this case we are considering here today against Vincent Bruno, what name were you known by?

A. Jack Mendel.

(Testimony of Jacob Lieberman.)

Q. But your true name is Jacob Lieberman?

A. Lieberman.

Q. Do you know the defendant in this case, Vincent Bruno?      A. Yes, sir.

Q. Do you see him seated in the courtroom here today?      A. Yes, sir.

Mr. Davis: It is stipulated, I presume, the witness has identified the defendant?

Mr. Duane: Yes.

Q. (By Mr. Davis): When did you first meet Mr. Bruno when you [28] came to San Francisco?

A. About the first week in August.

Q. Of what year?      A. 1945.

Q. Directing your particular attention to the 20th day of August, 1945, did you have occasion to meet the defendant on that day?      A. Yes, sir.

Q. Where did you meet him?

A. I met him at the Stardust Bar at 10:30 in the evening. I met him inside the bar.

Q. Was there anyone else with you at the time you met him?      A. At that very moment?

Q. Yes.

A. I was with Agent Grady at that time.

Q. Tell us now the circumstances under which you met Bruno in relation to the bar?

A. Yes, sir. I was with Agent Grady and Agent Bartis. I was in the Government car at Bush and Market Streets. Agent Grady gave me \$100 and searched me before he gave me the money, and I left the car over there and I walked down Larkin Street into Sutter Street. At that point I went into

(Testimony of Jacob Lieberman.)

the Stardust Inn and I met Vince Bruno there. We greet each other.

Q. Tell me this: When you went to the Stardust Bar where was Bruno in relation to the premises when you first saw him as you [29] entered?

A. He was outside the bar, right at the center of the premises inside the bar.

Q. When you say he was outside the bar, you mean he was on the customers' side of the bar?

A. On the customers' side of the bar.

Q. And about in the center of the room that contains the bar, is that correct? A. Yes, sir.

Q. Did you have any conversation with him at that point? A. Yes, sir.

Q. Who, if anyone else, was present, if you know, at that conversation?

A. Well, I and he alone. We were the only ones present at that particular time. There were other people at the bar there, but I paid no attention to other people at the bar. When I met him, Bruno told me that he was expecting me. He told me to follow him, and I followed him. We went to the rear of the bar and we turned right and we opened up the door. We went into a men's washroom over there. He went ahead and gave me a bindle of Heroin. I told him I wanted two. He said, "No, I thought you said, according to the telephone conversation, I thought it was only one."

So then he told me, "If you want to wait about a half an hour I will give you the two of them." [30]

I said, "No, I have to go back to my hotel."

(Testimony of Jacob Lieberman.)

I asked him what he gets for the bindles. He said \$50. I had two \$50 bills in my possession which I received from Agent Grady. I gave him the \$50 and I told him I would see him later at the hotel. But we then walked out together, right out the entrance to the bar, right into the street. I looked up and down. I told him, "I am going to look around for a cab to go back to the hotel."

We stood there for a minute or so. I then walked to Polk Street, on Sutter, and then I turned into Polk, walked up north into Fern Street—there is a little alleyway where I met Agents Grady and Bartis. I then gave Agent Grady the package and returned him the \$50, and I told him, "He only gave me one bindle."

I then marked the package with my initials on it.

Q. I show you Government's Exhibit No. 1 for Identification and I ask you if this is the bindle which the defendant sold to you for \$50 and which you turned over to Agent Grady? A. Yes, sir.

Q. Did you place your initials on there at that time?

A. Yes, sir, I recognize my initials on there.

Q. You see them on there now?

A. Yes, sir.

Q. Tell me, Mr. Lieberman, have you ever been convicted of a felony? [31]

A. Yes, sir, in 1931.

Q. What was that for? A. Narcotics.

Q. Was it in a Federal or State court?

A. Federal court.

(Testimony of Jacob Lieberman.)

Q. Was it for sale or possession?

A. Sale of narcotics.

Mr. Davis: I believe that is all.

Cross-Examination

By Mr. Duane:

Q. You say that conviction was in 1931?

A. Yes, sir.

Q. For the sale of narcotics? A. Yes, sir.

Q. You have not been convicted since that time for the sale of narcotics? A. Yes, sir.

Q. You have. You say you are a special employee of the Narcotics Bureau? A. Yes, sir.

Q. What does this employment as a special employee consist of?

A. Buying narcotics for the narcotic people in various different cities.

Q. How are you paid? A. By the day.

Q. What? [32] A. By the day.

Q. By the day? A. Yes, sir.

Q. Aren't you paid by the case?

A. Well, it could be by the case also.

Q. It could be? A. Yes.

Q. Isn't it a fact that when you turn a man in, as it were, you get paid for it? A. Yes, sir.

Q. You lived at the Uptown Hotel in San Francisco in August, 1945, didn't you?

A. Yes, sir.

Q. And you had a sort of roommate, if you call it such, by the name of Jimmie Berry, is that correct?

(Testimony of Jacob Lieberman.)

Mr. Davis: I object to this, your Honor, as not being proper cross-examination.

Mr. Duane: It is preliminary, if the Court please.

The Court: The word "preliminary" covers a wide range. It has to have some connection.

Mr. Duane: I can assure you that it does. It will be apparent in my next question after this.

The Court: Let him answer that question.

Q. (By Mr. Duane): Is that so?

A. Yes, sir, he had a room next to mine. [33]

Q. With a door open between the two rooms, is that right?      A. Opened and closed, yes, sir.

Q. And the defendant, Vincent Bruno, lived in the same hotel, didn't he?      A. Yes, sir.

Q. At that time?      A. Yes, sir, Room 219.

Q. You used to see him rather frequently?

A. Yes, sir.

Q. You also frequented the bar operated by Bruno's brother, the Stardust, didn't you?

A. Yes, sir.

Q. You were there several times?

A. Yes, sir.

Q. And you were there several times before August 20th; that is right, isn't it?

A. Yes, sir.

Q. Getting down to August 20th, now, as I understand your testimony, you rode to Bush and Market Streets in the automobile with Mr. Grady and with Mr. Bartis, right?      A. Yes, sir.

Q. And you left the automobile and you went to the Stardust?      A. Yes, sir.

(Testimony of Jacob Lieberman.)

Q. And you went by yourself, is that correct?

A. Yes, sir. [34]

Q. Walked along the street alone?

A. Yes, sir.

Q. And you went into the Stardust and you met the defendant Bruno?           A. Yes, sir.

Q. And you walked back to the washroom?

A. Yes, sir.

Q. Or lavatory, or whatever it is there, the two of you together, is that right?           A. Yes, sir.

Q. You had been in there before, hadn't you?

A. Yes, sir.

Q. In that lavatory?           A. Yes, sir.

Q. In fact, you were in there the day before, weren't you?

A. I don't recall whether it was the day before.

Q. And you were in there the night of that day before?

A. That I don't remember, if I was there or not. I know it was quite a number of times before that.

Q. What is that?

A. I know I was there a few times before that, but when I do not recall that.

Q. You received from the defendant this bundle?

A. Yes, sir.

Q. And then what did you say to him? "How much is it?" [35]           A. Yes, sir.

Q. You asked him how much it was?

A. Yes, sir.

Q. And he said \$50?           A. Yes, sir.

Q. And you gave him \$50?           A. Yes, sir.

(Testimony of Jacob Lieberman.)

Q. So before you went there you did not know how much it would be?

A. Oh, I knew it was \$50.

Q. Then why did you ask him how much it was?

A. I think probably it was more or probably it was less.

Q. You said you knew what it would be.

A. Every day the prices are fluctuating. They go up and down.

Q. You did not know what the market was on that day, is that it?

A. I knew exactly what it was, but everybody has different prices.

Q. Well, didn't you have a price with Bruno?

A. I did not make up a price with him right then and there.

Q. Then, why did you take two \$50 bills from Mr. Grady?

A. Well, I expected to buy two then.

Q. You did not know what you were going to pay for them?

A. Oh, yes, sir, I had an idea what I was going to pay for it.

Q. What was your idea? What were you going to pay?

A. Well, \$50 a package or probably \$52, \$53, or \$45.

Q. Yes, but you had no money on you other than this \$100, did you? [36]

A. No, sir.

Q. And you were going to get two bindles?

A. Yes, sir.



(Testimony of Jacob Lieberman.)

Q. So, notwithstanding that, you just asked him, "How much is it?" A. Yes, sir.

Q. You had no agreement beforehand?

A. No, sir. I knew for a fact that he was selling bindles at \$50 a package.

Q. Oh, you knew that? A. Yes, sir.

Q. By the way, you sold some narcotics in San Francisco during August, 1945, didn't you?

A. No, sir.

Q. No? A. No, sir, positively no.

Q. Positively no? A. That is correct.

Q. You did not have any narcotics in that room in the Uptown Hotel, you and Jimmie Berry?

A. No, sir.

Q. No? A. No, sir.

Q. And you did not do any smoking up there?

A. Oh, yes, sir.

Q. Sure you did. [37] A. Yes, sir.

Q. You did?

A. I didn't do any smoking there, but Vincent Bruno did the smoking.

Q. Oh, Vince Bruno, but you did not smoke?

A. No, sir.

Q. You do not smoke? A. No, sir.

Mr. Duane: Shall I proceed?

The Court: We will take the noon recess now, if you wish.

Ladies and gentlemen, we will take the noon recess at this time and resume the trial of the case at two o'clock. I will ask you to return at that time, and bear in mind the admonition I gave you heretofore.

(Thereupon a recess was taken until 2:00 p.m. this date. [38])

Afternoon Session, Tuesday, April 8, 1947  
2:00 P.M.

The Court: The Jurors are all present. You may proceed.

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JACOB LIEBERMAN

recalled; previously sworn.

Cross-Examination (Resumed)

By Mr. Duane:

Q. When you emerged from the Stardust the defendant walked out with you, didn't he?

A. Yes, sir.

Q. Out to the street? A. Yes, sir.

Q. You stood there and talked to him?

A. I stood there for about a minute or so.

Q. Just about a minute? A. Yes.

Q. At that time did you see Mr. Grady?

A. Yes, sir; he was standing right near by.

Q. He was where?

A. He was standing right near by.

Q. How far from you?

A. I would say about ten or fifteen feet away.

Q. About ten or fifteen feet from you?

A. Yes.

Q. You and the defendant were immediately

(Testimony of Jacob Lieberman.)

opposite the entrance [39] to the bar, I take it, were you?      A. Yes, sir.

Q. Grady was just about ten or fifteen feet from you?      A. On the outside.

Q. Yes, on the outside, right where you were standing, about ten or fifteen feet from you?

A. It may have been twenty feet. I couldn't say exactly.

Q. It would not be fifty or one hundred?

A. No, sir.

Q. So then you walked along Sutter Street towards Polk?      A. Yes, sir.

Q. Did Grady go with you?

A. He must have been on the—alongside of me, because when I reached the corner I saw him.

Q. When you reached what corner?

A. Polk Street.

Q. When you reached the corner of Sutter and Polk you saw Grady?      A. Yes, sir.

Q. Where was he then?

A. Oh, about probably five feet away from me.

Q. Five feet behind you?

A. On the side of me.

Q. Alongside of you?      A. Yes.

Q. You turned the corner, you turned to your right, and you went [40] north on Polk Street?

A. Yes, sir.

Q. And you went into Fern Avenue?

A. Yes, sir.

Q. Was Bartis in there when you came into Fern Avenue?      A. Yes, sir.

(Testimony of Jacob Lieberman.)

Q. Bartis was right there? A. Yes.

Q. Grady came behind you, did he?

A. Yes, sir.

Q. Then the three of you stood together there and, as I understand it, you gave him \$50 and a bindle, is that right? A. Yes, sir.

Q. Who did you hand it to?

A. Agent Grady.

Q. You did not give anything to Bartis at that time? A. No, sir.

Q. Then what did you do after you met Bartis and Grady there? Where did you go?

A. We went along that alleyway, Fern Street, into Larkin, and when we hit Larkin Street we went right up to Bush Street, where the Government car was stationed over there. I went into the car with him.

Q. What did you do after that?

A. They drove me to Fulton Street, Fulton and Fillmore. [41]

Q. To the Uptown Hotel?

A. Yes, sir. They dropped me off around the corner.

Q. Just around the corner from the Uptown Hotel? A. Yes, sir.

Q. You were stopping at the Uptown Hotel at that time? A. Yes, sir.

Q. Did you then go into the hotel?

A. Yes, sir.

Mr. Davis: I am going to object now, your Honor. I think we are getting too far afield to what transpired after the commission of this offense.

(Testimony of Jacob Lieberman.)

Mr. Duane: I will submit the objection.

Mr. Davis: It is not part of the *res gestae*.

Mr. Duane: I think it is part of the *res gestae*.

The Court: The witness said he went into the Uptown Hotel. Now, what is the next question?

Q. (By Mr. Duane): The next question is did you have a guard come in your room that night?

Mr. Davis: I object to that, your Honor.

The Court: Unless there is some connection with the matter, I would hold that that was remote now.

Q. (By Mr. Duane): When you returned and you met Grady and Bartis on Fern Avenue, were you searched?           A. Yes, sir.

Q. You were searched in the alleyway there?

A. Yes, sir.

Q. Was that before or after you gave the bindle and the \$50 to Grady?

A. I was searched at Polk—I was searched at Bush and Larkin Streets. When I got out of the Government car I was searched there.

Q. What kind of search did they give you there?

A. They just went over my pockets and through my shirt to see if I had anything hidden.

Q. That was before you went into the Stardust?

A. Yes, sir.

Q. After you left the Stardust and came back to Fern Avenue where you met Grady and Bartis, were you searched again?           A. No, sir.

Q. They did not search you again?

A. No, sir.

(Testimony of Jacob Lieberman.)

Q. You simply gave them the \$50 and the bundle, is that right?      A. Yes, sir.

Q. Did you see Bruno the next day?

A. I think I did.

Q. What time of day?

Mr. Davis: I am going to make the same objection, your Honor. I do not see what possible connection it could have with this case as to whether he saw him the day after.

The Court: Unless it involved some conversation or something [43] that might be relevant—I do not see any harm in the witness being permitted to answer the question as to whether he saw the defendant on that day.

The Witness: I may have seen him the following day. I am not positive whether I seen him or not, but I know I have seen him quite a number of times after that, three or four times a week.

Q. (By Mr. Duane): You are not sure whether you saw him the next day and had a conversation with him?      A. No, sir.

Mr. Duane: That is all.

Mr. Davis: We have no further questions.

The Court: That is all.

Mr. Davis: May I recall Mr. Grady for one or two questions?

WILLIAM H. GRADY

was recalled as a witness on behalf of the Government; previously sworn.

Q. (By Mr. Davis): Mr. Grady, I neglected to take this matter up with you on your direct examination: You have testified that an agent by the name of Bartis was with you upon this occasion, is that correct? A. Yes, sir.

Q. Is he still in your department?

A. Yes, sir. He is on sick leave at this time. [44]

Q. Did you make an effort to produce him here today?

Mr. Duane: That is objected to on the ground it is incompetent, irrelevant, and immaterial.

Mr. Davis: I am entitled to show, your Honor, why I have not produced him, since his name has appeared in the case.

Mr. Duane: I think there is a method of doing that, if your Honor please, and this is not the method.

Mr. Davis: What method?

The Court: I will overrule the objection on the ground stated.

The Witness: Yes, sir. I contacted his hotel yesterday. He lives in a hotel here in San Francisco. And they said he had gone back——

Mr. Duane: I can't hear the witness, if the Court please.

The Witness: Pardon me, Mr. Duane.

I called his hotel yesterday and they said he had returned——

(Testimony of William H. Grady.)

Mr. Duane: Just a minute. That is objected to on the ground it is hearsay.

The Court: That objection is good. I will sustain the objection.

Q. (By Mr. Davis): Did you locate Mr. Bartis at the hotel?           A. No, sir.

Q. How long has it been since Mr. Bartis has been working in your department here in San Francisco?

A. Mr. Bartis has been on leave from our department since the [45] first of July of last year, 1946.

Mr. Davis: That is all.

Mr. Duane: No questions.

Mr. Davis: The Government rests.

The Court: What are you going to do about these exhibits which are marked for identification?

Mr. Davis: Pardon me. Will you take the stand again, Mr. Grady?

Q. If I recall your testimony, Government's Exhibit No. 1, the narcotic bindle, is the bindle which you received from Mr. Lieberman in Fern alley, is that correct?

The Court: I think he has already testified to that, Mr. Davis.

The Witness: Yes, that is the one.

Mr. Davis: At this time, your Honor, I will ask that Government's Exhibit No. 1 for Identification be received in evidence as Government's exhibit first in order.

Mr. Duane: To which we object on the ground



(Testimony of William H. Grady.)

it is incompetent, irrelevant, and immaterial, hearsay, and in no way binding on the defendant in this case.

The Court: The objection is overruled. It will be admitted.

Mr. Davis: I offer in evidence Government's Exhibit 2, which is the envelope in which that bundle was placed before it was delivered to the chemist.

Mr. Duane: We make the same objection to that, and we make it on the further ground that obviously the paper is in no way binding upon this defendant. It is something in the handwriting of some person.

The Court: Let me see it.

Mr. Davis: If the Court please, we only offer it for the purpose of establishing the chain of the custody of the narcotics from the time they were received by the agent until they were produced here in court by the Government chemist.

Mr. Duane: We will submit that that is all self-serving.

The Court: Aren't you offering the writing itself in evidence?

Mr. Davis: No, your Honor.

The Court: You are just offering it for the limited purpose of showing it was the container in which Exhibit 1 was kept until it was returned in court?

Mr. Davis: Yes, your Honor.

The Court: For that limited purpose it may be admitted.

(U. S. Exhibits Nos. 1 and 2 for Identification were thereupon received in evidence and were marked respectively Government's Exhibits Nos. 1 and 2.)

Mr. Davis: That is all. The Government rests.

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### VINCENT BRUNO

the defendant herein, was called as a witness on his own behalf; sworn.

The Clerk: State your name to the Court and Jury.

A. Vincent Bruno.

### Direct Examination

By Mr. Duane:

Q. You are the defendant here. How old are you?      A. Thirty-eight years old.

Q. During the month of August, 1945, were you employed at the Stardust Tavern?

A. Yes, I was.

Q. Who operates that establishment?

A. It is owned by my brother.

Q. Your brother Joseph Bruno?

A. That is right.

Q. On the night of the 20th of August, 1945, were you at the premises?      A. Yes, sir.

Q. What were your duties?

A. Well, I was acting as manager while my brother was away.

(Testimony of Vincent Bruno.)

Q. You were not a bartender? A. No, sir.

Q. You were on the floor, is that so?

A. I was. [48]

Q. You know this witness here, Lieberman, do you?

A. Yes, I knew him very well. He lived in the same hotel I did.

Q. Did you know him under the name of Lieberman?

A. No, under the name of Jack Mendel.

Q. Jack Mendel? A. Yes, sir.

Q. Did you see him frequently in that hotel?

A. Every day.

Q. Were you ever in his room?

A. Oh, not exactly in his room; in the next room, in Berry's room. They had the door open between them. I used to go up there once in awhile.

Q. The door was open between the two rooms?

A. That is right.

Q. Did you ever see Lieberman or Mendel in the Stardust Bar?

A. Oh, yes, he came in many a time.

Q. Many a time? A. Many a time.

Q. Directing your attention to August 20th, 1945, at about the hour of 10:30 p.m., did you see him?

A. Well, being that he mentioned—I couldn't remember—being that he mentioned it, I knew he came in one night there, he was kind of in a hurry—he walked in the place and said, "Vincent, I want to talk to you." So we walked into the back.

Q. Into the back where? [49]

(Testimony of Vincent Bruno.)

A. In the washroom. It is the men's toilet. Everybody used to go in there. "I want to talk to you by yourself."

Q. Is that the lavatory that is used by the customers, the patrons?      A. That is right.

Q. The door is unlocked?

A. It is always unlocked.

Q. You went in there with him?

A. We got back there and he says, "When you get through tonight, or if you can come now, we are going to have a game up in my room, my room and Jim's room. Why don't you come up and play with us?"

I said, "You will have to wait until I get through tonight. When I get through I will come up to the hotel and play with youse."

Q. Was there any further conversation than that between you?

A. No, not much. Just "What's doing? How's everything?" That is all. And if I remember, he used the lavatory while we were talking, and when he got through he stopped and said, "Just a minute." He bent down and tied his shoe, if I remember right.

Q. Then did you walk out with him?

A. Yes, sir.

Q. Out to the sidewalk?      A. Yes. [50]

Q. Let me ask you, while you were in that lavatory or at any place in the Stardust did you hand him anything?

A. (The witness shook his head.)

(Testimony of Vincent Bruno.)

Q. Or did he hand you anything?

A. No, sir.

Q. Just say yes or no.                   A. No, sir.

Q. I show you here Government's Exhibit 1 and I will ask you if you handed that to Lieberman or Mendel?

A. I never seen that before in my life.

Q. Did he give you any money?

A. No, sir.

Q. Did he talk to you on that occasion about narcotics of any kind?                   A. No, sir.

Q. About how many people would you say were in the tavern, the bar there, at the time he came in there?

A. Jeez, I don't remember. As a rule about that time of the night is when we start getting real busy. As a rule, at that time we was always packed.

Q. You don't recall this particular night?

A. I don't recall this special night, no.

Mr. Duane: That is all.

### Cross-Examination

By Mr. Davis:

Q. How long were you employed at the Stardust Bar? [51]

A. Oh, about a little over a year, about a month after my brother bought it.

Q. When was that?

A. If I remember right, I think we bought it about November or December, 1944.

(Testimony of Vincent Bruno.)

Q. And you think you were there about a year?

A. Yes, until the time I got arrested.

Q. The time you were arrested?

A. That is right.

Q. And that was about a year then?

A. If I remember right, I think it was in March or February, either one of those months when I was arrested.

Q. Now, when you were employed there, in what capacity were you employed?

A. Acting as manager.

Q. You used to sign checks and operate the bar, didn't you?      A. That is right.

Q. Was your brother there too? Was he working bar?

A. No, he used to come in and out. My brother had other interests.

Q. You say Lieberman lived in the same hotel as you did?      A. That is right.

Q. What hotel was that?

A. Uptown Hotel.

Q. You visited up in the room next to his on several occasions? [52]

A. I used to see him in the lobby at all times, almost every day and every night.

Q. You say he used to come in the Stardust Bar frequently, is that correct?      A. Yes, sir.

Q. Do I understand you correctly that you do not recall whether it was the night that we are discussing here, August 20th, that Berry came into the bar?      A. Berry?

(Testimony of Vincent Bruno.)

Q. I mean Lieberman.

A. Repeat that, please.

Q. I will withdraw the question. Do you know now to the best of your recollection whether it is this particular night, August 20th, 1945, that Lieberman came into the bar?

A. I don't recollect the day at all. I just remember the night that he came in there.

Q. Just one night?

A. He took me in the back and asked me those questions.

Q. Over how long a period of time did you know Lieberman and see him coming into the bar?

A. Oh, I don't know. I just met him at the hotel I think just about a month or so before that.

Q. So for about a month or so Lieberman was coming in and out of the bar, is that correct?

A. After we got acquainted he used to come down to the bar and [53] drink.

Q. And on some evening, of which you do not know the date, he came into the bar and the two of you went back to the washroom, is that correct?

A. That is right.

Q. Do you ever recall that similar transaction occurring at any other time?

A. He never did call me in the back before.

Q. Only the once?

A. Just that one time.

Q. What did he say to you when he came in the bar?

A. When he came into the bar he said, "Hello,

(Testimony of Vincent Bruno.)

Vince. How are you?" He said, "Come in the back. I want to talk to you."

Q. Do I understand your testimony correctly to be that all that conversation was about having a game—I presume a card game—in his room later?

A. That is right. We played cards there before.

Q. You recall at that time, as far as you know, he bent down and tied his shoe, is that correct?

A. I think that is what he did. He bent down and I am pretty sure he tied his shoe up.

Q. You are not certain?

A. I am pretty sure.

Q. Have you ever been convicted of a felony?

A. Never. [54]

Q. Isn't it a fact that you were convicted in this court in 1937?

A. That was not a felony. The way I understand, if you are sent to a county jail it is not a felony.

Mr. Davis: Well, I think the witness is mistaken.

The Witness: That was for obscene literature.

Mr. Davis: If the Court please, I will ask leave to subpoena the District Clerk to bring in the record in Case 26099-S.

The Court: The Clerk can get them now. Do you want just the file, Mr. Davis, or do you want the docket entries?

Mr. Davis: I think the file will be sufficient.

The Court: Just the file.

Mr. Duane: In the interest of time, if the Court please. I might say this to your Honor: There will be an objection made to Mr. Davis' offer and I want



(Testimony of Vincent Bruno.)

to argue it very briefly, and I would like to do it out of the presence of the jury. I am prepared to do it now. As I say, in the interests of time, I can do it in just a few minutes.

The Court: While we are waiting for the Clerk to bring the record down, I will give the Jury a brief recess and we can discuss the matter if you wish in the absence of the Jury. You may step down.

Mr. Linehan, will you take the Jury out to the jury room. You may be excused for a few moments. Please bear in mind the admonition of the Court.

(The Jury retired from the courtroom and the following proceedings took place out of the hearing of the Jury:)

Mr. Davis: If the Court please, also in the interests of saving time we are prepared to show that on March 23, 1937, this defendant, Vincent Bruno, plead guilty to an indictment charging a violation of 18 USC 334, sending obscene letter through the mail. He plead guilty to that charge on that date and he was sentenced to 90 days in county jail. I believe Mr. Duane is of the opinion, and perhaps has so informed his client, that following the state rule, if he received less than a one-year sentence it would not be a felony, and I respectfully submit that no matter what the sentence is, in the Federal Court, in view of the fact that the indictment with which he is charged carries a felony penalty, that the defendant would be guilty of a

(Testimony of Vincent Bruno.)

felony even if he had merely been placed on probation.

Mr. Duane: I might say in answer to that, if the Court please, I recall very definitely authorities on that subject. I am taken surprise here, because I did not know this matter was coming up or I would be prepared for it. The rule has been the same as our state law, that where the defendant is sent to the county jail, the penalty fixes the degree. If the defendant is sent to the county jail, the conviction is a misdemeanor. There are Federal authorities on that subject. If we had time, I would like to submit them, but it is some years since I went into the question. [56]

The Court: We give probation frequently, Mr. Duane, where there has been a conviction, either by plea or at the trial of a felony charge. That has nothing to do in Federal procedure with whether or not there has been a conviction of a felony. Applicants for citizenship, for example, are required to disclose all those matters irrespective of the extent and nature of the punishment. The defendant may be under the apprehension that because he received of punishment of only ninety days that he had not been convicted of a felony, but there is nothing that I know of in the Federal law that is to the contrary. The matter came up at one of the conferences in the circuit, one of the Judicial Conferences, and some of the judges wanted to amend the statute on that particular subject.

Mr. Duane: I feel very definite on it. I have

(Testimony of Vincent Bruno.)

read decisions on that question, not recently, and I could not cite them to your Honor at this time, but I am sure that they are there.

Mr. Davis: If the Court please, I am so well satisfied—the matter comes up in our office every few days or every few weeks. I have discussed it often with attorneys and called their attention to the fact, even when they have discussed the possibility of pleading their clients, and I have called their attention to the difference between the state and the Federal rules. I have no doubt about it.

The Court: No one has ever raised that question before me as yet, and I have had cases, of course, where this same question [57] has been asked in criminal cases and I have never heard this point raised.

Mr. Duane: There is this much to be said. If Mr. Davis is right—I won't say he is not right—there may be later authorities holding the way Mr. Davis contends. But if he is right, then it was not the contention of this defendant on the stand to deny he was convicted.

The Court: He said about the time the United States asked to have the file sent for that he had only served a county jail sentence, so I think you are perfectly at liberty, if the United States Attorney does not do that, to bring that out yourself, of course.

Mr. Davis: All I want to put it in for, your Honor, is for the purpose of conforming to the usual rule that the conviction of a felony can be considered

(Testimony of Vincent Bruno.)

in construing the credibility of a witness. I have no doubt the defendant was not trying to deny the conviction of this particular offense.

The Court: He is not denying the proceedings that took place. He just thought he was not guilty of a felony. There was a plea of guilty according to the record and a judgment of 90 days' imprisonment.

Well, bring the Jury back.

(The Jury returned to the courtroom and the following proceedings were had in the presence of the Jury:)

The Court: The Jurors are all present. You may proceed. [58]

## VINCENT BRUNO

recalled; previously sworn.

### Cross-Examination

(Resumed)

By Mr. Davis:

I will reframe the question.

Q. Mr. Bruno, have you ever been convicted of a felony?      A. Is that a felony now?

The Court: You may give any answer that you feel is a proper answer to the question and then explain it.

The Witness: They convicted me in the Federal court on an obscene literature charge. I do not know whether it is a felony or not, sir.

(Testimony of Vincent Bruno.)

Q. (By Mr. Davis): If I told you that it was a felony under the law, your answer would be that as far as you know you do not know whether it was a felony or misdemeanor?

A. As far as I know, I do not know what it is. I was informed if you are sent to a county jail it automatically is a misdemeanor.

Q. Your purpose in answering my question originally as to answering that you were not convicted of a felony was not based upon any desire to hide the true facts, but, according to you, upon a misapprehension as to what conviction of that particular crime meant, is that correct?

A. That is right. That is way I was informed, sir.

Mr. Davis: That is all. [59]

### Redirect Examination

By Mr. Duane:

Q. As a matter of fact, you were sentenced to 90 days in the county jail, isn't that so?

A. That is right.

Q. That offense had nothing to do with narcotics?

A. No, sir.

Mr. Duane: That is all.

Mr. Davis: That is all.

The Court: That is all.

Mr. Duane: That is our case, if the Court please.

The Court: Did you wish to argue this case, gentlemen?

Mr. Davis: A very brief argument so far as the Government is concerned.

Mr. Duane: I think it will be brief, if the Court please.

The Court: I suppose you will want to know about the instructions before you argue?

Mr. Davis: I think it would be well.

The Court: I have not looked at the defendant's proposed instructions yet. I just had a chance to look at the plaintiff's. Would you like to have about a five-minute recess before you argue the case?

Mr. Davis: Yes.

Mr. Duane: Yes.

The Court: Then I can inform you about the rulings on the instructions. I am sorry, ladies and gentlemen, you will have [60] to take another trip outside for a brief period. Remember the admonition of the Court.

(The Jury again retired from the courtroom and the following proceedings were had in their absence:)

The Court: I will advise counsel as to the rulings of the Court on the proposed instructions in accordance with the rules. I have looked at all the Government's proposed instructions and I will say in substance that they appear to be proper. I do not intend to give them all in as much detail as that in which they are submitted, nor in repetitious form, but in substance I will give to the Jury the provisions of the Harrison Act and the Jones-Miller Act, the burden of proof and the effect of possession under the statute, and I will also give in substance—

I assume the defense would want me to give the entrapment instruction.

Mr. Duane: Yes, your Honor.

The Court: As to the defendant's instructions, in substance the first one—they are not numbered, Mr. Duane, but I am taking them in the order in which I have them in front of me—I shall instruct as to the presumption of innocence. I shall give in substance the second and third proposed instructions; also the next one and the next one. You are familiar, Mr. Duane, with the way I instruct the Jury anyhow. I may not use the exact language, but I endeavor to give in substance the general subject matter that you refer to there. Likewise the next one. [61] Now, this instruction that has no number but has the case of *Steiner vs. United States* quoted——

Mr. Duane: Yes.

The Court: I think I would not want to give that. I think that is a bad instruction for the defendant. It is more than substantial evidence that is required. It is evidence that produces conviction beyond a reasonable doubt.

The next instruction is in connection with the entrapment instruction. I will give that in substance. And the next instruction about suspicion. I usually endeavor to give that. The next instruction has to do with entrapment. I will give the general instruction that I always give on that subject.

The proposed instruction with respect to the Jury's duty in deciding in accordance with the larger number of witnesses will be given; the next

one as well. I will give an instruction on reasonable doubt that I think fairly covers what you have in mind. The next one is proper. The next one is proper. I will give an instruction similar to *People vs. Murphy*, or similar to the one given in *People vs. Murphy*, except that I phrase it that the defendants are entitled to the independent judgment of each juror.

As to the next one, I would not single out any witness as to that but will instruct the Jury generally as to the standards by which they may determine what witness, if any of the witnesses, show bias and prejudice, and if they testified falsely [62] the Jury may disregard their testimony.

I will instruct that the Jury may take into account conviction of a felony in the case of any witness.

The last instruction I have no objection to giving. I shall give a stronger one for the defendant than that. That is the one about the two different conclusions. If you wish me to give that instruction, I will give it. That is the one about two different conclusions being drawn from the testimony of the witness, the very last one. It has four citations, *United States vs. Lancaster*, and other cases. You may have yours in different order. If you wish, I will give that instruction, but I usually give a stronger one.

Mr. Duane: I would be satisfied to have your instruction.

The Court: Do you want to agree how long you want to talk? I do not ask you to do that. I think



I will give the case to the Jury tonight. You probably won't take more than ten or fifteen minutes each?

Mr. Davis: I do not believe so.

Mr. Duane: I do not think so.

The Court: That will enable me to give the case to the Jury about a quarter past three or so. We will take a brief recess.

(Thereupon a brief recess was taken. The Jury was brought back to the courtroom and counsel for the Government and counsel for the defendant made closing statements to the Jury, after which the Court instructed the Jury as follows:) [63]

The Court: Ladies and gentlemen, the case you have to decide is an important one. All cases that juries have to determine, particularly in a criminal field, are important cases. They are important both to the Government and to the party who is charged with crime. Therefore they require on the part of the members of a Jury a completely impartial, unprejudiced consideration. The Jury in a Federal court is a part of a team with the Judge that we both want for the purpose of accomplishing the administration of justice. Our functions are somewhat different. The Jury decides the question of facts, and it is the province of the Jury entirely to make the decision as to the facts. In this matter the question for the Jury to determine is the guilt or innocence of the defendant. The Court does not interfere with that province of the Jury. I have

no notion as to what your verdict should be in this case. That is entirely and exclusively your function and your province. You are not to assume from anything the Court may have said in ruling upon any objections during the course of the trial that the Court has any opinion as to what your verdict should be. I haven't any such opinion.

Now, also, it is well to call your attention to the fact that you may not interfere with the province of the Judge. The Judge tells you what the law is, and whether you like the law or not is beside the question. You must take the law as the Judge gives it to you. [64]

You must exclude in this case any prejudice or sympathy that you may have. You are not to concern yourself with the manner of punishment of the defendant in the event that you bring in a verdict of guilty, because the matter of punishment in the event of a finding of guilt is exclusively a function of the Court. You must keep in mind, as I told you when you were impaneled, that because the defendant was indicted or charged with these offenses, it does not follow that he is guilty. That is, there is no presumption because of the fact that he has been charged that he is guilty. The defendant is presumed under the traditional precepts of our system of law to be innocent, and that presumption continues until the evidence introduced for and on behalf of the Government proves his guilt beyond a reasonable doubt.

The burden of proving the guilt of the defendant is on the Government. It never shifts to the defend-

ant. Perhaps you should know what is meant by the statement that you can't find the defendant guilty until his guilt is established beyond a reasonable doubt, particularly what is the meaning of the term "reasonable doubt." The definition that I give to Jurors is a comparatively simple one. "Reasonable doubt" is what the term itself implies: It means a doubt that is based on reason. It does not mean every conceivable doubt. It does not mean a doubt that may be a fanciful doubt or an imaginary doubt or one that is captious or speculative. It means an honest doubt [65] that appeals to reason and is founded on reason.

If after considering the evidence in this case you have such a doubt in your mind as would cause you or some reasonable person to pause and hesitate before acting in some grave transaction in your own life, then you have such a doubt as the law contemplates to be a reasonable doubt. The rule of reasonable doubt applies to every material element of the event which is charged.

Now, ladies and gentlemen, whether you believe the witnesses who have testified in this case, and the weight that is to be attached to their testimony respectively, is a matter for your sole and exclusive judgment. We start out with a presumption in every case that a witness is presumed to speak the truth. We mean by that when he steps up and sits in this chair, before he opens his mouth, we presume he is going to speak the truth. However, that presumption may thereafter as he testifies be negated by the manner in which he testifies, by the character

of his testimony, by contradictory evidence, by his motives, by evidence as to his character and reputation for truth, honesty and integrity, and also there may be taken into account whether or not he has ever been convicted of a felony. In this case both one of the witnesses for the Government and the defendant have been convicted of a felony. You may take that into account in evaluating the testimony of these respective witnesses in deciding how much weight you want to attach to [66] their evidence respectively. You may accept or reject the whole or any part of the testimony of a witness. If it is shown to you that a witness has testified falsely in any respect upon any material matter, you may distrust his testimony in other respects and in that event you may reject all of the witness' testimony.

In order to evaluate the weight of the witness' testimony there are some standards of practice you may take into account. Among these are the circumstances under which the witness testifies, his demeanor and the manner on the stand, his intelligence, relationship which he bears to the Government or the defendant, the manner in which he might be affected by your verdict, the extent to which he is contradicted or corroborated by other evidence, if at all, and any other matter which reasonably sheds light upon the credibility of the witness.

If there has been any testimony stricken out in the case, you must not take it into account, nor should you take into account any testimony to which there has been an objection sustained. You need

not necessarily decide the case in favor of the side which has produced the greater number of witnesses against a lesser number on the other side. It makes no difference how many witnesses testify. It is not number that produces conviction, but the quality of the testimony weighed according to these various standards which I have given you.

The attorneys have argued the case, as is their right, and [67] indeed their duty. In doing so they have stated what the evidence is. If you find any discrepancy between the evidence as testified to by the witnesses and that stated to be the testimony by the attorneys in their arguments, you will discard the statements of the attorneys and consider only the evidence as it was given by the witnesses.

It is possible that there may have been, or you may find that there were, some discrepancies or inconsistencies in the testimony of a witness or between the testimony of one witness and that of another. Do not pay any attention to those discrepancies unless they reasonably bear upon the guilt or innocence of the defendant. If they do, take them into account; otherwise they are not worthy of your serious consideration.

You must at all times remember that the defendant is entitled to any reasonable doubt that you may have in your minds, and also at the same time remember if you have no such doubt, then the Government is entitled to a verdict.

The defendant has testified in this case in his own behalf. That being so, you will determine his credibility according to the same standards applied

to any other witness, and when the defendant takes the stand he becomes a witness. These standards I have already pointed out to you. You may also consider in connection with the testimony of the defendant the interests he may have in his case, his hopes and his fears, and what he has to gain or lose as the result of your verdict. The defendant [68] is entitled to the independent consideration of each and every juror in coming to a verdict.

In this case there has been some mention of the fact that the Government has used an informer in the investigation of the case and also as a witness. It is true that the Government is permitted to use informers to assist in the enforcement of the law and to present the opportunity to violate the law to a person believed to have been engaged in the commission of a crime. The Government need not reveal the identity of the informer nor produce such informer as a witness in the trial of a case in which the informer assisted the Government, for the reason that it is the duty of every citizen to communicate to his Government any information which he has of the commission of an offense against its laws; and that a court of justice will not compel or allow such information to be disclosed, either by the subordinate officer to whom it is given, by the informer himself, or by any other person, without the permission of the Government, the evidence being excluded not for the protection of the witness or of the party in the particular case, but upon general grounds of public policy, because of the confidential nature of such communications.

I should like to also advise you as to the law on what is commonly known as entrapment. Where the officers of the law have incited a person to commit the crime charged and lured him on to its consummation with the purpose of arresting him, [69] the law will not authorize a verdict of guilty, but if the intent and purpose to violate the law are present, the mere fact that public officers furnished the opportunity is no defense. The Government is not engaged in the business of manufacturing criminals; it has enough to do to prevent the commission of crime. But it often becomes necessary for Government officers and agents to match their wits against the wits of the man who is deliberately violating the law or who has violated the law and in such a case the officers or agents may afford him an opportunity to commit a crime.

If a man is engaged and prepared to break the law, the mere fact that employees of the Government put it in his power to break it and thereby capture him in the act of breaking it does not constitute an entrapment and is no defense. If, however, a man has no disposition to break the law, and would not break it except that he was induced and persuaded therein by the Government, then that does constitute entrapment and would be a defense warranting an acquittal of the crime charged.

The case before you, ladies and gentlemen, is not a difficult one so far as the issues are concerned. I do not mean to imply by that statement your verdict should be one way or the other just by some simple process of mind. What I am intending to

say is the issue of the case, that is, what is claimed by the Government and what is contended by the defendant, presents a simple issue. There are two counts in this indictment, as I [70] told you. The first count charges a violation of the Harrison Narcotic Act. The substance of that charge is the sale, the dispensing of Heroin, not being in the original stamped package.

The second count of the indictment charges violation of the Jones-Miller Act, the substance of which is knowingly and fraudulently concealing and facilitating the concealment of a quantity of Heroin imported into the United States contrary to law.

Now, the Harrison Narcotic Act provides as follows:

“It shall be unlawful for any person to purchase, sell, dispense, or distribute any of the drugs mentioned in Section 1040(a) except in the original stamped package or from the original stamped package; and the absence of appropriate tax-paid stamps from any of the aforesaid drugs shall be prima facie evidence of a violation of this sub-section by the person in whose possession they may be found; and the possession of any original stamped package containing any of the aforesaid drugs by any person who has not registered and paid special taxes as required by Section 1383 and 1384 shall be prima facie evidence of liability to such special tax.”

That is the provision of the law that applies to the first count of the indictment.



The Jones-Miller Act, which applies to the second count of the indictment, in substance provides as follows: [71]

“If any person fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or assists in so doing or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported contrary to law, such person shall, upon conviction, be punished as the law provides.”

On a trial for the violation of the Jones-Miller Act, which I just read to you, if it appears that the defendant has or has had possession of a narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the Jury.

The term “narcotic drug” includes Heroin. If you are convinced from the evidence in this case beyond a reasonable doubt and to a moral certainty that the defendant now on trial had Heroin in his possession on the occasions charged in the second count of the indictment and concealed or in any manner facilitated the concealment of such Heroin, you will find the defendant guilty unless he has explained his possession of the Heroin to your satisfaction.

If you are satisfied beyond a reasonable doubt

that the defendant had possession of the narcotics described in this [72] indictment, you are at liberty to infer that the narcotics had been, to the knowledge of the defendant, imported and brought into the United States contrary to law. That is a provision of the Jones-Miller Act, which I have previously read you in part.

Therefore, the issue in this case, ladies and gentlemen, for you to decide, is whether or not you are convinced beyond a reasonable doubt under the first count of the indictment the defendant sold and dispensed the Heroin referred to in this case in violation of the Harrison Narcotic Act. Under the second count of the indictment you are called upon to determine whether or not you feel beyond a reasonable doubt from the evidence presented the defendant knowingly and fraudulently concealed and facilitated the concealment of a certain quantity of Heroin.

If you can conscientiously do so, ladies and gentlemen, you are expected to agree upon a verdict. You should freely consult with one another in the jury room. If anyone of you should become convinced your view of the case is erroneous, you should not be stubborn and refuse to abandon your own view under such circumstances. On the other hand it is entirely proper to adhere to your own view if, after a full exchange of ideas, you still believe you are right.

What I have just said does not modify the instruction which I previously gave you that the defendant is entitled to the [73] independent

judgment of each of you. I have only indicated in what I have just said that having in mind the defendant is entitled to the independent judgment of each member of the Jury, that independent judgment should be considered judgment and not an unreasoning and stubborn judgment.

If it should become necessary for the Jury to communicate with the Court during its deliberations or upon its return to the Court respecting any matter connected with the trial of this case, you should not indicate to the Court how the Jury stands numerically or otherwise on the question of the guilt or the innocence of the defendant. This caution the Jury should observe at all times after the case is submitted to it and until the Jury reaches a verdict. I read that perhaps rapidly, but in simple language what I was intending to say to you was if there should be any reason for your having any communication while you are deliberating, before you have reached a verdict, you should not in any communication that you send to the Court indicate in any manner how you stand at that time numerically with respect to the guilt or innocence of the defendant.

Whenever all of you agree to a verdict it is a verdict of the Jury. In other words, your verdict must be unanimous. You should not return to the courtroom or authorize your foreman to sign a verdict unless and until all of you have agreed to it.

When you retire to deliberate, you may select one of your number as foreman or forelady, as the case

may be, and he or [74] she will sign your verdict for you and he or she will represent you as your spokesman in the further conduct of this case in this court.

We have prepared a form of verdict for you, ladies and gentlemen. It reads as follows:

“We the Jury find Vincent Bruno, the defendant at the bar, . . . . . as to count one of the indictment, . . . . . as to count two of the indictment.”

In the blank space you will insert guilty or not guilty in each instance. This form is prepared for your convenience and is not intended to indicate to you in any manner what your verdict should be.

Does either side wish to note any exceptions to the Court's charge?

Mr. Davis: None for the Government.

Mr. Duane: None.

The Court: Very well, ladies and gentlemen. You may retire to consider your verdict.

(Thereupon, at 3:55 p.m., the Jury retired from the courtroom to deliberate upon its verdict, and at approximately 5:00 p.m. returned to the courtroom and rendered a verdict of guilty as to count one of the indictment and guilty as to count two of the indictment; whereupon, the Court sentenced the defendant to serve a term of five years on count one and ten years on count two, terms of imprisonment to run consecutively, and fined the defendant \$5,000 on count two.) [75]

CERTIFICATE OF REPORTER

I, J. J. Sweeney, Official Reporter, certify that the foregoing 75 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting to the best of my ability.

/s/ J. J. SWEENEY.

[Endorsed]: No. 11589. United States Circuit Court of Appeals for the Ninth Circuit. Vincent Bruno, Appellant, vs. United States of America, Appellee. Supplemental Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed June 17, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

